

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Permit of)	
)	
VIRGINIA COMMUNICATIONS, INC.)	File No. BPMDH-20010420ABK
)	
For Multipoint Distribution Service Hub Station)	
WFY595-H01, Bettendorf, Iowa)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 16, 2004

Released: March 17, 2004

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

1. In this *Memorandum Opinion and Order*, we address Virginia Communications, Inc.’s (VCI) petition for reconsideration¹ of the cancellation of the permit authorizing operation of Multipoint Distribution Service (MDS) hub Station WFY595-H01, Bettendorf, Iowa. For the reasons stated below, we grant VCI’s petition and reinstate the permit.

2. *Background.* Station WFY595, Bettendorf, Iowa has been a licensed and operating station since 1983.² On April 20, 2001, an application was filed to operate a hub station in connection with Station WFY595.³ That application was granted on July 13, 2001 and assigned the call sign WFY595-H01.⁴ VCI acquired the license for Station WFY595 and the associated permit for Station WFY595-H01 “from Contemporary Innovations Corporation in a transaction approved by the FCC in November 2001.”⁵

3. VCI was also the holder of the MDS Basic Trading Area (BTA) authorization for the Davenport-Moline, Iowa BTA (No. 105).⁶ On February 12, 2003, the Wireless Telecommunications Bureau (Bureau) released a Public Notice indicating that VCI’s authorizations acquired as the Davenport-

¹ Petition for Reconsideration (filed Mar. 14, 2003) (Petition). Although VCI’s permit was listed as canceled effective September 4, 2002, *see Public Notice, Wireless Telecommunications Bureau Site-by-Site Action*, Report No. 1413 at 29 (released Feb. 12, 2003) (Public Notice), public notice of this action was not given until February 12, 2003. Accordingly, VCI’s petition is timely filed, within 30 days from the date of public notice of Commission action. *See* 47 C.F.R. §§1.4(b)(4) and 1.106(f); 47 U.S.C. § 405(a).

² File No. BMLMD-8350328.

³ File No. BPMDH-20010420ABK

⁴ *See* Mass Media Bureau Instructional Television Fixed Service Multipoint Distribution Service Actions, Report No. 439, *Public Notice* (rel. Jul. 18, 2001).

⁵ File No. 20010306AAM (granted Nov. 1, 2001). *See* Petition at 2.

⁶ *Id.*

Moline BTA holder had been canceled⁷ and that VCI's authorization for Station WFY595-H01 had been canceled.⁸ On March 14, 2003, VCI filed the instant petition.

4. *Discussion.* VCI argues that the Bureau erred in declaring the permit for Station WFY595 to be canceled. VCI contends that the Bureau evidently concluded that because VCI was in default on its payments with respect to its BTA obligations, the permit for Station WFY595 automatically canceled along with the permits VCI acquired as the Davenport-Moline BTA holder, pursuant to Section 1.2110(g)(4)(iv) of the Commission's Rules.⁹ VCI maintains that because it separately acquired Station WFY595 from an incumbent license holder, VCI's rights to that station are separate from and unrelated to VCI's status as the holder of the Davenport-Moline BTA.¹⁰

5. We agree with VCI. The permit for the hub station was associated with Station WFY595, which predates VCI's acquisition of the authorization for the Davenport-Moline BTA in 1996.¹¹ In view of the foregoing, we agree with VCI that this permit should not have been canceled along with the authorizations associated with the Davenport-Moline BTA authorization. Accordingly, we will grant reconsideration and reinstate the permit for Station WFY595-H01.¹²

6. We note that the construction deadline for Station WFY595-H01 passed while VCI's Petition was pending. After VCI filed the Petition, the Commission commenced a proceeding to thoroughly review the rules relating to MDS and the Instructional Television Fixed Service.¹³ In the *NPRM & MO&O*, the Commission suspended construction deadlines for site-based MDS licensees and permittees that had unexpired licenses or permits that have not expired as of the release date of the *NPRM & MO&O*.¹⁴ Since VCI's permit has now been reinstated, we believe it should be placed in the same position as other site-based permittees. Accordingly, we will not establish a construction deadline for Station WFY595-H01 at this time, but VCI's permit will be subject to whatever action the Commission takes in WT Docket No. 03-66.

7. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.41 and 1.106 of the

⁷ *Public Notice, Wireless Telecommunications Bureau Site-by-Site Action*, Report No. 1413 at 28-29 (released Feb. 12, 2003).

⁸ *Id.*

⁹ 47 C.F.R. § 1.2110(g)(4)(iv). Petition at 1-2.

¹⁰ Petition at 2.

¹¹ See *Public Notice, Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service in 493 Basic Trading Areas* at 23 att. A (rel. Mar. 29, 1996).

¹² See *Mobile UHF, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 22945 (2001) (Commission may reinstate license when licensee demonstrates that prior determination that license had cancelled automatically for failure to construct was erroneous).

¹³ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands; Part 1 of the Commission's Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 03-66, 03-67, 02-68, MM Docket No. 97-217, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722 (2003) (*NPRM & MO&O*).

¹⁴ *Id.* at 6805 ¶ 201.

Commission's Rules, 47 C.F.R. §§ 1.41, 1.106, the petition for reconsideration filed by Virginia Communications, Inc. on March 14, 2003 IS GRANTED.¹⁵

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

¹⁵ In this *Memorandum Opinion and Order*, we take no action with respect to VCI's authorizations for the Davenport-Moline BTA or VCI's pending pleadings with respect to those authorizations. Those matters will be addressed separately.